



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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December 21, 2015

Ms. Susan Hege
21478 Durham Way
Bristol, Indiana 46507

Re: Formal Complaint 15-FC-289; Alleged Violation of the Access to Public Records Act by the Elkhart County Sheriff's Department

Dear Ms. Hege,

This advisory opinion is in response to your formal complaint alleging the Elkhart County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Department responded via Captain James L. Bradberry. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 20, 2015.

BACKGROUND

Your complaint dated October 20, 2015 alleges the Elkhart County Sheriff's Department violated the Access to Public Records Act by not providing you with records you requested.

On or prior to October 1, 2015, you requested records, including pictures and video, from the interior of Elkhart County Courthouse. Your request was acknowledged on October 1, 2015. On October 8, 2015 your request was denied under Ind. Code §§ 5-14-3-4(b)(1) and 5-14-3-10. The Department considers the video requested as part of an investigatory record. Further, the Department contends the release of the video would display the court's layout and thereby pose a risk to security.

Your request was made pursuant to an alleged incident on June 24, 2015. It appears as if your request was made with sufficient particularity. Furthermore, law enforcement personnel have suggested the video does indeed exist.



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On October 14, 2015 you requested "a written transcript of the words that were left on the message machine, or voice transmission." This request was denied on October 14, 2015 as lacking reasonably particularity. You also requested "proof of incoming phone calls to the Elkhart County Courthouse by any of the phone numbers provided below at the time of the accusations." On October 15, 2015 this request was denied under Ind. Code § 5-14-3-4(b)(1). On October 16, 2015 you requested records related to an investigation conducted by Detective Saegar. This request was also denied under Ind. Code § 5-14-3-4(b)(1).

The Department has responded to your complaint and contends its denials were proper.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Elkhart County Sheriff's Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Department's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

The Department has made several denials based on the investigatory exemption. Under Ind. Code § 5-14-3-4(b)(1) the investigatory records of a law enforcement agency are exempt from disclosure at the discretion of the law enforcement agency. This exemption is fairly broad and covers records for all investigations, whether or not they are concluded. The Elkhart County Sheriff's Department is a law enforcement agency and can therefore exercise this discretion. However, it is my opinion to the extent the release of the records will not affect public safety or compromise an ongoing investigation, the records should be released.

The Department has also cited Ind. Code § 5-14-3-10 to deny your request for video and images of the courthouse. This citation is inapplicable for this situation because the Department contends the denial was related to Ind. Code § 36-2-13-5(a)(6). Ind. Code § 36-2-13-5(a)(6) charges the Sheriff to "preserve order in all courts of the county." However, Ind. Code 5-14-3-4(b)(10) states an agency shall have discretion to release documents which may "jeopardize a record keeping or security system." Ostensibly, this



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may be the case, however, I am skeptical footage from a common area in a public building would compromise the integrity of a security system.

Although I decline to find a violation has occurred, I implore the Sheriff to reevaluate the reasons why these records are being withheld in a light most favorable to access and transparency.

CONCLUSION

Based on the foregoing, it is the determination of the Office of the Public Access Counselor the Elkhart County Sheriff's Department has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LHB", is written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Captain James L. Bradberry